

Before the  
Federal Communications Commission  
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Amendment of the Commission's	)	WT Docket No. 97-82
Rules Regarding Installment Payment	)	
Financing For Personal Communications	)	
Services (PCS) Licenses	)	
	)	

**COMMENTS OF OMNIPPOINT CORPORATION**

Omnipoint Corporation ("Omnipoint"), by its attorneys, files these comments in response to the Commission's Further Notice of Proposed Rule Making<sup>1</sup> ("FNPRM") in the above-captioned proceeding. Omnipoint and its subsidiaries have been an active participant in the Commission's PCS Entrepreneur's Band, and currently hold eighteen (18) Block C licenses and fifty (50) Block F licenses. Omnipoint was the fourth highest bidder in the initial Block C auction. Finally, Omnipoint is one of the few Block C licensees to launch Entrepreneur Band systems; Omnipoint's commercial launch on its Block C Philadelphia, PA Block C license is the first Entrepreneur Band operating system in a top-10 U.S. market.<sup>2</sup>

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<sup>1</sup> In the Matter of Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, Second Report and Order and Further Notice of Proposed Rule Making, WT Dkt. No. 97-82, FCC 97-342 (rel. Oct. 16, 1997).

<sup>2</sup> Omnipoint is also operating on its Block C spectrum in Wichita, KS. Omnipoint was also an early and active proponent of the Commission's Entrepreneur Band, in fulfillment of the Commission's statutory mandate to provide opportunities for small businesses in the auction allocation of licenses. 47 U.S.C. § 309(j)(3)(B).

If the decisions of the Second Report and Order are implemented, the Block C auction proposed in the FNPRM could well be a significant re-allocation of the Block C spectrum. Indeed, it could essentially render moot the initial Block C auction if a substantial number of the licenses from the top 50 markets are returned. Therefore, it is especially critical for the Commission to treat the re-auction participants equally in every respect to the initial auction, in order to avoid compounding problems already afflicting the Entrepreneurs that played by the rules. The re-auction must be fair to those Entrepreneurs that dropped out of the initial Block C auction, and to those that operate Entrepreneur Band PCS systems.

Therefore, Omnipoint offers the following comments on the Commission's proposals for the re-auction of C Block licenses and spectrum:

**I. For the Block C Re-Auction, All Parties That Participated in the Initial Block C Auction Should Be Placed On The Same Footing as Before**

Omnipoint agrees with the Commission's decision in the Second Report and Order to "allow all entities that were eligible for and participated in the original C block auction to bid in the reauction."<sup>3</sup> This ground rule is only fair. Companies that overbid in the Block C auction, and drove other bidders out of the markets that they wanted, have already significantly harmed those applicants and licensees that chose not to overbid in the Block C auction.

If the Commission now decides to *drastically change* the payment rules that apply to the initial Block C auction licensees, it must permit all bidders to participate in the re-

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<sup>3</sup> Second Report and Order, at para. 22; *id.* at Appendix B (modification to Section 24.709(9)(i) of the Commission's rules provides that "any entity that was eligible for and participated in the first auction for frequency block C, which began on December 18, 1995, will be eligible to bid in a reauction of licenses for frequency block C conducted after March 31, 1998.").

auction on the same footing they were on at the time of the initial auction. For the re-auction, this means that entities that were eligible "very small businesses" (i.e., average gross revenues of \$15 million or less) at the time of the initial C Block auction should be treated as "very small businesses" for purposes of the re-auction.

The "very small business" status should relate back to the time of the initial Block C auction because the Commission's policy is to encourage successful entrepreneurship, and not to punish parties that have made financial progress since the initial Block C auction. Indeed, the Commission's Block C eligibility rules already embody this concept: an entrepreneur's post-licensing increases in gross revenues and total assets are not counted against it in assessing its continuing eligibility. See 47 C.F.R. § 24.709(a)(3) (increased gross revenues or total assets of licensee or attributable entity are not counted toward licensee's continuing eligibility); Fifth Memorandum Opinion and Order, PP Dkt. No. 93-253, 10 FCC Rcd. 403, 420 (1995) ("We emphasize that we have a strong interest in seeing entrepreneurs grow and succeed in the PCS marketplace.").

Companies like Omnipoint, that are meeting the challenges of creating new competition in the marketplace, should not be left at a relative disadvantage in the re-auction compared with other Block C participants, in the form of a relative 10% higher auction cost, by virtue of the fact of their recent build-out, financing and market success. By contrast, if all parties to the initial Block C auction are not set at an equal footing, bidders such as NextWave, which has never made a single installment payment on their Block C licenses, would be eligible for greater auction discounts relative to other bidders in the initial Block C auction that have made installment payments simply because they have grown their businesses by getting service out to the public.

## **II. Re-Auction Should Be A Single Simultaneous, Multi-Round Auction With Upfront Payments That Discourage Speculative, Frivolous Bidding**

Omnipoint supports the Commission's proposal for a single, consolidated auction of all C Block licenses resulting from the licensee elections made pursuant to the Second Report and Order (i.e., amnesty, disaggregation, or prepay options) and from prior Block C defaults. FNPRM at ¶ 86. A single auction is not just the most expeditious way to re-allocate the spectrum and licenses to companies that will put it to its most valuable commercial use, simultaneity is essential to the fair allocation of licenses.

The evidence is overwhelming that the multiple-round, simultaneous auction is the best auction format for allocation of interdependent assets such as the Block C licenses. It is an auction methodology that is familiar to all bidders from the initial Block C auction, as well as small businesses that participated in the Block D,E, or F auction or other related FCC spectrum auctions. Therefore, such an auction methodology allows small businesses to avoid or minimize the internal time and resources they need to devote to preparation for the auction event. In addition, the Commission has already correctly found on numerous occasions that the simultaneous, multiple-round auction is the most efficient auction methodology.

It is critical for the Commission to strive for a *simultaneous* re-auction of all potentially available Block C spectrum. However, there is a serious problem if all licenses are not *returned* simultaneously. There is a real possibility that bidders returning spectrum will be placed at a relative disadvantage because they cannot effectively compete against other bidders that do not turn in their licenses, which would undermine the very purposes of the re-auction itself. The following example, in somewhat extreme terms, demonstrates the problem. Suppose that NextWave, with approximately 40 Block C licenses of the top 50 markets, does not return its licenses on January 15, and suppose that only one other bidder ("Bidder X") does return its licenses on January 15 with the expectation of bidding on its returned markets at a lower price. Bidder X will find itself

the sole target of all other bidders, including NextWave, with no means of defending itself in the re-auction with counterbids. This is the marginal price versus average price problem that was solved through the simultaneous auction format, but would be vitiated if licenses are not returned simultaneously.

NextWave's dominance is so great that a re-auction *without* a return of its licenses bears no resemblance to a re-auction *with* its licenses returned. Since no other bidder can predict NextWave's decisionmaking, every other bidder is left with this "prisoner's dilemma" of whether to return licenses. The Commission can only ensure a fair simultaneous re-auction by requiring NextWave to "go first" in the election process (for example, January 5th) so that other bidders may make a rational determination of what licenses they should return, if any, on January 15th.

Omnipoint also supports the Commission's proposal for a \$0.06/MHz/POP upfront payment. More significant upfront payment requirements will discourage frivolous bidding as well as pre-licensing defaults. In addition, this more significant upfront payment obligation should not be too onerous to financially-qualified applicants. After all, with the elimination of the installment payment mechanisms, all participants should have their financing well underway by the time of the auction in order to meet the down payment and final payment requirements which will ensue soon after the auction.

Based on its experience in three prior FCC auctions, Omnipoint has two additional suggestions. *First*, the Commission should return to more simple methods of calculating the minimum bid increment. Complicated minimum bid increment rules, such as the minimum bid increment matrix employed in the Block D, E, and F auction, are more complicated than necessary.

*Second*, a minimum opening bid will not yield higher overall prices for the public Treasury, and it may prevent an otherwise efficient allocation of licenses in cases where the opening bid is set too high. Moreover, if the Commission sets a minimum opening

bid for licenses, Omnipoint believes that the proposed "10%" minimum bid increment could create significant anomalies. For example, in some significant markets, 10% of the Block C price would create such a high opening bid requirement that the market may go unbid. While we strongly urge the Commission not to set a minimum opening bid, the maximum such opening bid that Omnipoint could recommend is \$0.10/POP, which still represents millions of dollars in larger markets.

**III. Commission Should Schedule the Re-Auction To Commence Six to Eight Months After the Licenses Are Returned and 60 Days After the Default Measurement.**

The Commission must schedule the Block C re-auction with an appreciation for at least two critical factors. *First*, all parties need a minimum of at least 6 to 8 months after the publication of the FCC notice listing all spectrum and licenses available in the re-auction in order to raise funding and prepare for the auction, and that assumes that there are no significant changes to the capital market conditions. Thus, assuming that the January 15 election date holds, parties would need until at least June to September, 1998 to become financially qualified to participate in the auction. *Second*, because all Block C licensees have until May 31, 1998 to make payment after their election,<sup>4</sup> it is critical for any auction participant to understand who is, and is not, a defaulted Block C licensee prior to the short-form filing deadline of the Block C re-auction. In short, a simultaneous re-auction of all Block C licenses to be returned, including those that are held up in bankruptcy, must be a primary objective for the re-auction.

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<sup>4</sup> The Second Report and Order (at ¶ 25) nominally requires payment on March 31, 1998, but then grants an automatic 60-day grace period for all such payments until May 31, 1998. Thus, there is little reason for any licensee to pay early, on March 31.

The six to eight month timeframe after public notice of the Block C election results is the minimum time needed for small businesses to obtain necessary capital prior to the auction (and assuming no capital significant market changes). Because the Commission has proposed to eliminate the auction debt installment plan and require payment in full within days after licensure, it is absolutely critical for small businesses to have an ample opportunity to raise funds in advance of the auctions. Moreover, an adequate period for fund raising will help to reduce bidder speculation and reliance on strategies of mid-auction or post-auction fund raising ventures. It is in no party's interest to commence a Block C auction in which parties are less than fully prepared to pay for what they bid.

Because the May 31, 1998 payment deadline could well result in massive Block C defaults after the election date of January 15, any party planning to participate in the Block C re-auction must adjust its auction strategies to take into account the defaults that occur on that day. The Commission should not force auction participants to begin the auction, and guess as to what May 31st will bring: such an unfortunate timing decision would likely yield more claims from overextended bidders that they cannot make payments in light of "changed circumstances." Instead, the Commission should allow all Block C re-auction participants with a reasonable amount of time to assess the level of available Block C spectrum (including that spectrum from defaulting parties) before those parties start bidding in the re-auction. Moreover, if the Commission imposes re-auction eligibility restrictions against defaulting parties,<sup>5</sup> logic would suggest that it should not permit such May 31 defaulters from starting into the bidding process.

For these reasons, Omnipoint recommends that the Commission commence the

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<sup>5</sup> FNPRM, at ¶ 84.

Block C re-auction with the filing of short-form applications no earlier than 45 days after the last date for determining defaulting bidders; assuming the current election and payment, the short-form applications should be due on or about July 15, 1998.

Respectfully submitted,

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